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In the matter of:



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I N D E X

Opening Statement	3	
Chairperson Maybelle Taylor Bennett		
Preliminary Matters	5	
Presentation of Petitioner	7	
Mr. Colby, D.C. Office of Planning		
Reports of Advisory Neighborhood Commissions		41
Mr. John Chagnon, ANC Commissioner Ward 4		
Ms. Mary Jackson, ANC Commissioner Ward 7		
Persons in Opposition	57	
Mr. Lyle Schauer, Capitol Hill Restoration Society		
Mr. Richard Wolf, Capitol Hill Restoration Society		
Mr. Richard Hall, Campaign for New Community		

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P-R-O-C-E-E-D-I-N-G-S

7:11 p.m.

CHAIRPERSON BENNETT: Good evening, ladies and gentlemen. My name is Maybelle Taylor Bennett, Chairperson of the Zoning Commission for the District of Columbia. Joining me this evening are Commissioners Franklin and Parsons. I declare this hearing open. The case that is the subject of this hearing is Case No. 97-15. Case 97-15 is an initiative of the Zoning Commission resulting from a petition from the District of Columbia Office of Planning, the United States Department of Justice with the District of Columbia Office of the Corporation Counsel and the District of Columbia Department of Consumer and Regulatory Affairs, to amend the text of the District of Columbia Zoning Regulations, Title 11, District of Columbia Municipal Regulations.

Now if you are worried about what jurisdiction you are in, you have not been paying attention. The proposed amendments pertain to zoning and other code regulations governing housing for handicapped individuals by updating the rules regarding community-based residential facilities, with the intent of eliminating any inconsistencies between zoning, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act.

The Zoning Commission will consider the advertised proposal, any modifications thereto, or alternative proposals that are presented and reasonably related to the scope of the proposed amendments. The specific proposal to amend the zoning regulations is contained in the notice of public hearing for this case. Copies of that notice are available for the public.

Notice of today's hearing was published in the D.C. Register on January 23, 1998, and in the Washington Times on January 20, 1998. This hearing will be conducted in accordance with the provisions of 3021 of the District of

1 Columbia Municipal Regulations, Title 11, Zoning.

2 The order of procedure will be as follows. First, preliminary
3 matters; second, the presentation of the petitioner, the District of Columbia, Office of
4 Planning; reports of other agencies; reports of Advisory Neighborhood
5 Commissions; persons in support; persons in opposition.

6 The Commission will adhere to this schedule as strictly as
7 possible. Those presenting testimony should be brief and non-repetitive. If you
8 have a prepared statement, you should give copies to staff and orally summarize the
9 highlights. Please give us your statement before summarizing. Each individual
10 appearing before the Commission must complete two identification slips and submit
11 them to the reporter at the time you make your statement. If these guidelines are
12 followed, an adequate record can be developed in a reasonable length of time.

13 Are there any preliminary matters?

14 MS. DOBBINS: Madam Chairman and members of the
15 Commission, the only matters I have is that you have in front of you a witness list for
16 this evening. These are the people who signed up in advance of tonight's hearing.
17 And you have a letter from Council member Sharon Ambrose, Council member for
18 Ward 6, requesting that you hold these hearings on all of the nights that have been
19 indicated. Those are the only matters that I have.

20 CHAIRPERSON BENNETT: All right. Thank you. Colleagues,
21 generally we hold hearings as needed. And usually what that means is our first
22 hearing date -- on our first hearing date, our hearing room has standing room only
23 and there is an obvious need for people to testify at another time because they were
24 not able to testify in the time allotted on the first hearing date. And I would prefer to
25 maintain that particular procedure. I would ask my colleagues to help us determine
26 that. I am open to your suggestions -- as opposed to establishing all three of the

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1 dates as definite hearing dates.

2 MS. DOBBINS: Madam Chairman, may I just also indicate that
3 in the public hearing notice, we do have a requested date for persons to sign up to
4 testify.

5 CHAIRPERSON BENNETT: That is right.

6 MS. DOBBINS: It was February -- I think 23rd.

7 CHAIRPERSON BENNETT: The 23rd.

8 COMMISSIONER FRANKLIN: And that notice went out quite in
9 advance?

10 MS. DOBBINS: Yes. It went out at least 40 days in advance. It
11 was published at least 40 days in advance in the register and even before that in the
12 times.

13 CHAIRPERSON BENNETT: January 20 in the Times and
14 January 23 in the Register.

15 MS. DOBBINS: And copies to all of the ANC's.

16 COMMISSIONER FRANKLIN: Well, I agree with the Chair.

17 CHAIRPERSON BENNETT: All right.

18 COMMISSIONER FRANKLIN: We should see to what extent we
19 can't get through tonight.

20 CHAIRPERSON BENNETT: All right. Thank you. Let's begin
21 then with the petitioner. Oh, I am sorry, Mr. Parsons?

22 COMMISSIONER PARSONS: I just thought we ought to wait
23 until the end of the hearing before we do that.

24 CHAIRPERSON BENNETT: All right. I thought I would get it out
25 as a preliminary matter.

26 COMMISSIONER FRANKLIN: That is what I was suggesting.

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1 CHAIRPERSON BENNETT: All right. Why don't we start with
2 the petitioner, Office of Planning. Mr. Colby?

3 MR. COLBY: Thank you, Madam Chairman. Let me first start
4 with some background. As you have noted, the actual amendments to the
5 regulations are only two and fairly short. I think their impact, though, far exceeds
6 their length or the number of words in them. But let me start with some background.

7 In 1991 and 1992, the Executive Branch and the Zoning
8 Commission undertook a comprehensive updating of the rules regarding CBRF's or
9 community-based residential facilities with the same intent that we are pursuing
10 tonight, that is, eliminating inconsistencies between those zoning regulations and the
11 Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act.
12 Tonight we are hearing two additional zoning amendments that the U.S. Department
13 of Justice believes are required as a matter of federal law to complete the process of
14 bringing the District of Columbia zoning regulations into full compliance with the Fair
15 Housing Act. The D.C. Government, with the Office of Corporation Counsel as the
16 lead agency, has negotiated an agreement with the Justice Department as to text for
17 public hearing by the Zoning Commission together with other rulemaking by the
18 Department of Consumer and Regulatory Affairs.

19 The first zoning amendment would allow CBRFs for handicapped
20 persons in multi-family residential zones as a matter of right with no restrictions not
21 equally applied to housing for non-handicapped persons. And the second
22 amendment would create a "reasonable accommodation" process applicable to
23 housing for handicapped persons so as to provide flexibility from the strict
24 application of normal rules to accommodate the special needs of the handicapped.

25 In 1980 and 1981, going way back to when the Commission first
26 started dealing with these issues, the Zoning Commission adopted an overall

1 definition of CBRFs with the key characteristic being a residential use for persons
2 who have common need for treatment, rehabilitation, assistance, or supervision in
3 their daily living. Seven specific facility types were defined and regulated following
4 the more detailed licensing definitions of each type of facility. For zoning purposes,
5 these facilities were classified as low-impact, medium-impact, and high impact and
6 regulated accordingly.

7 That is contained in the report, but let me say that low-impact --
8 and I have also handed out a chart that summarizes that on one page -- low-impact
9 are community residence facilities, healthcare facilities, and youth residential care
10 homes. We will get into these in a little more detail in a minute. Medium-impact are
11 emergency shelters. High-impact are youth rehabilitation homes or corrections,
12 adult rehabilitation homes coming from corrections again, and substance abuser
13 homes or residential drug rehabilitation facilities.

14 It is important to understand the definition of handicapped. In
15 1988, the FHAA defined handicapped broadly to include any physical or mental
16 disability that substantially limits a person in performing one or more major life
17 activities. The latter in turn include activities such as caring for oneself, performing
18 manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
19 Finally, the definition includes individuals who are regarded as having such
20 handicaps. And in Section 802 of the Fair Housing Act, it is described as follows.
21 Handicapped means with respect to a person a physical or mental impairment which
22 substantially limits one or more of such persons major life activities or a record of
23 having such an impairment or being regarded as having such an impairment. But
24 such term does not include current illegal use of or addiction to a controlled
25 substance.

26 The definition clearly affects which of the 7 defined types of

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1 CBRF are and are not handicapped facilities. Those that are handicapped facilities
2 have special protection under the Fair Housing Act. Thus a community residence
3 facility is clearly a residence for handicapped persons. Adult and youth rehabilitation
4 homes in the correctional system are clearly not housing for the handicapped. The
5 remaining four types of CBRFs can be either handicapped or non-handicapped
6 depending on the resident population, and the zoning administrator, under the
7 proposed rules -- again, coming out of the agreement with the Department of Justice
8 -- would make a case-by-case determination of whether a facility is handicapped
9 generally as discussed below. An emergency shelter provides overnight housing for
10 people in dire need. Few or no services are provided. Typically a shelter
11 accommodates a significant percentage of people who are handicapped but is not
12 usually considered a handicapped facility because many of the residents are not
13 handicapped. Specialized emergency shelters, however, such as those for abused
14 women, might qualify as handicapped facilities on a case-by-case basis. Similarly, a
15 youth residential care home is typically not a handicapped facility although some
16 handicapped individuals may be among the residents. A substance abusers home
17 provides intense short-term residential treatment for persons attempting to
18 overcome drug or alcohol addiction. Such a home is usually connected with a
19 hospital. It is not a handicapped facility if it houses persons who are currently users
20 of drugs or alcohol or are receiving treatment to overcome addiction. However,
21 persons who are "in recovery" from addiction are specifically deemed handicapped
22 under Fair Housing.

23 In today's zoning in multi-family zones, R4 and less restrictive,
24 R4 and above, there continues to be a maximum occupancy limit or other
25 restrictions such as spacing requirement or a special exception process for CBRFs
26 in the zoning regulations. The type of limitation varies according to the type and size

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1 of facility. The issue is that any CBRF that is occupied by handicapped persons is
2 entitled to equal treatment with housing for non-handicapped persons.

3 So now we come to the regulation or the first of the regulations
4 which we are proposing, and the text comes essentially right out of the agreement
5 between the Corporation Counsel and Justice Department as follows. Subsection
6 330.5, "The following uses shall be permitted as a matter of right in an R4 district.
7 Community-based residential facility provided that notwithstanding any provision in
8 this Title to the contrary, the zoning administrator has determined that such a
9 community-based residential facility which otherwise complies with the zoning
10 requirements of this Title that are in general and uniform applicability to all matter of
11 right uses in an R4 district and by implication less restrictive is intended and
12 operated as housing for the handicapped as that term is defined under Section
13 3602(h) of the Fair Housing Act as amended..." There is a note added there. The
14 issue was whether 100 percent of the residents of a CBRF had to be handicapped in
15 order for it to qualify as such. The 100 percent provision of a previously discussed
16 version of the agreement has been dropped.

17 The most straightforward effect of this rule is that a community
18 residence facility which is specifically intended and operated for handicapped
19 persons and any other CBRF specifically for occupancy by handicapped persons
20 would no longer be subject to any restrictions such as special exception, numerical
21 occupancy limit, or spacing requirements -- such as those particularly. This
22 liberalization of the rules would be applicable to CBRFs for handicapped persons in
23 the R4, R5, SP, commercial, and mixed use zones.

24 And then there are some more charts appended to our report
25 which go into greater detail. As stated earlier, case-by-case determinations of
26 handicapped occupancy will need to be made to determine eligibility for matter of

1 right status. The previously adopted restrictions would continue to apply to non-
2 handicapped facilities. The overall intent is that only the normal building standards
3 of the applicable zone district -- height, lot occupancy, and FAR -- would limit the
4 size of a residential building for the handicapped as is the case now with rooming
5 and boarding houses, road dwellings, flats, and apartment buildings. Thus,
6 handicapped persons would have equal access with non-handicapped persons to
7 these types of residential buildings.

8 I would go on and add a note that was contained from
9 Corporation Counsel to the Department of Justice on the agreement. "As you know,
10 the District's original language was intended to address the risk that an applicant
11 would misuse the CBRF process by establishing a residence with a primarily able-
12 bodied population and only a minimal number of handicapped residents. We have
13 agreed to the changes you suggest with the understanding that, as you note, they
14 are intended not to permit evasion of zoning rules, but to permit able-bodied staff to
15 live in what is otherwise a facility for the handicapped." I draw a line there because
16 what I am going to go into now is reasonable accommodation, which while it
17 supports the same objectives is quite different.

18 Reasonable accommodation comes from the 1988 amendments
19 to the Fair Housing Act which require governments to make reasonable
20 accommodation or rules regarding housing for handicapped persons. For purposes
21 of this subsection -- and this comes from the Act -- "Discrimination includes a refusal
22 to permit at the expense of the handicapped person reasonable modifications of
23 existing premises if such modifications may be necessary to afford such person full
24 enjoyment of the premises. Or a refusal to make reasonable accommodation and
25 rules or policies or practices or services when such accommodations may be
26 necessary to afford such person equal opportunity to use and enjoy a dwelling."

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1 Reasonable accommodation.

2 In the earlier case 91-15, the task force and the Commission
3 assumed that -- the Zoning Commission assumed that the special exception process
4 was an acceptable mechanism to provide just such reasonable accommodation.
5 However, while some courts have upheld the validity of that process for this
6 purpose, many others have not and the Department of Justice prefers a matter of
7 right interpretive process, which is why we are headed toward or why we have
8 proposed such a process.

9 The agreement with the Department of Justice provides that a
10 general reasonable accommodation rule will be proposed for adoption in DCMR 14
11 housing regulations of the District of Columbia. The key decision maker on request
12 for reasonable accommodation is the director of the Department of Consumer and
13 Regulatory Affairs. This indicates that a broad array of licensing, housing, and
14 building code rules could be modified by individual determinations as well as zoning
15 waivers. OP's recommendation, concurred in by the Office of Corporation Counsel,
16 is that the zoning regulations not include the lengthy general rule, but rather make
17 reference to it and indicate that the flexibility applies to zoning as well as to other
18 codes. In order for the proposed rule to be applicable to all zones where residential
19 uses are allowed, the amendment is to permit matter of right uses in the R1 district
20 as follows. That regulation would be paragraph 201.10 which reads, "A community-
21 based residential facility for occupancy by handicapped persons shall be permitted
22 as a matter of right provided that the determination of handicapped facilities shall be
23 made according to the process and criteria set forth in 14 DCMR." And wherever it
24 turns up in DCMR. So there will be a direct reference from the zoning regulations to
25 the housing regulations.

26 And for the reasons which I have just gone through, the Office of

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1 Planning recommends that the Zoning Commission adopt the two recommended
2 text amendments one pertaining to reasonable accommodation process and the
3 other to matter of right uses in the multi-family zone districts.

4 CHAIRPERSON BENNETT: Thank you.

5 MR. COLBY: And I am available for any questions that I can
6 answer.

7 CHAIRPERSON BENNETT: I know that is right. Questions of
8 Mr. Colby, colleagues?

9 COMMISSIONER FRANKLIN: Mr. Colby, on page 5 of your
10 report, the following sentence appears. "The most straightforward effect of this rule
11 is that a community residence facility (which is specifically intended and operated for
12 handicapped persons), and any other CBRF specifically for occupancy by
13 handicapped persons would no longer be subject to any restrictions." What is the
14 difference between a community residence facility specifically intended and
15 operated for handicapped persons on the one hand and a CBRF specifically for
16 occupancy by handicapped persons on the other?

17 MR. COLBY: I am sorry, I think I have found where you are
18 reading. This liberalization -- is that how it starts?

19 COMMISSIONER FRANKLIN: The most straightforward effect --

20 CHAIRPERSON BENNETT: The most straightforward --

21 MR. COLBY: Oh, I have got it.

22 COMMISSIONER FRANKLIN: It seems to say there are two
23 categories of facilities and I don't understand the difference between the two of
24 them.

25 MR. COLBY: Well, the first one -- let me work through it slowly --
26 the first one, the CBRF specifically for occupancy by handicapped would no longer

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1 be subject to any is too strong as to the restrictions as noted. The restrictions which
2 set CBRFs apart from regular buildings.

3 COMMISSIONER FRANKLIN: I follow that.

4 MR. COLBY: And then it says, "The liberalization of the rules
5 would be applicable..." --

6 COMMISSIONER FRANKLIN: No, no. I am sorry, sir. There
7 are two references here. One is to a "community residence facility (which is
8 specifically intended and operated for handicapped persons)," and then it refers to,
9 "and any other CBRF specifically for occupancy by handicapped persons." Is that
10 the same thing or why are there two --

11 MR. COLBY: No, a community residence facility is a type of
12 CBRF.

13 COMMISSIONER FRANKLIN: Okay. And would you clarify to
14 me what it is? CBRF stands for community-based residential facility?

15 CHAIRPERSON BENNETT: Right.

16 MR. COLBY: Yes. A community residence facility is a -- I think
17 it is defined here or it is defined in the handouts. But it is a -- it is the most basic
18 facility.

19 COMMISSIONER FRANKLIN: Because the proposed 330.5
20 refers only to something called a community-based residential facility.

21 MR. COLBY: Right. Which is the umbrella category.

22 COMMISSIONER FRANKLIN: Yes, I thought it was. But then I
23 see in that sentence that there is something called a community residence facility,
24 and I need an education.

25 MR. COLBY: Let me see if I can --

26 COMMISSIONER FRANKLIN: Maybe the Chair can help me.

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1 CHAIRPERSON BENNETT: Well, I am not sure. You can't
2 speak from the audience.

3 COMMISSIONER FRANKLIN: Let me look at the definition here.

4 CHAIRPERSON BENNETT: We will give you an opportunity
5 shortly.

6 COMMISSIONER FRANKLIN: Let me look at the definitions
7 then.

8 MR. COLBY: Here is a definition on page 33 of our handout.
9 Let me read it to you.

10 COMMISSIONER FRANKLIN: You better because it is very
11 small type.

12 MR. COLBY: Yes. "A community residence facility is a facility
13 that meets the definition for and is licensed as a community residence facility." That
14 doesn't do you any good.

15 COMMISSIONER FRANKLIN: That is helpful.

16 MR. COLBY: Yes, that doesn't do any good. I am sorry.

17 CHAIRPERSON BENNETT: Mr. Franklin, what it seems like you
18 are capturing is a redundancy almost.

19 COMMISSIONER FRANKLIN: Well, I was just questioning --

20 CHAIRPERSON BENNETT: But it may not be once we get a
21 hold of the --

22 COMMISSIONER FRANKLIN: I am curious as to -- that is why I
23 -- well, there is something called youth care homes and community residence
24 facilities referred to in 303.1 under existing regs. Let me go to the definitions.
25 Maybe somebody on our witness list will clarify this in due course. So why don't we
26 just -- let me just check our definitions for a moment. Well, the only definition that

1 leaps out at me is community-based residential facility. So let's pass that by for the
2 moment and put it in what we call a parking lot.

3 My next question is -- has to do with the reasonable
4 accommodation section of the proposal. And I don't understand how that language
5 at 201.10 is supposed to address something called a reasonable accommodation.
6 Now I understand there is a cross-reference to 14 DCMR. But with respect to
7 zoning -- or let's say with respect to -- is it anything that this Commission has to
8 concern itself with?

9 MR. COLBY: Yes. Because it is not -- if it were just licensing,
10 the answer would be no.

11 But --

12 COMMISSIONER FRANKLIN: Well, what kind of reasonable
13 accommodation would be contemplated to waive or adjust a zoning regulation in this
14 context?

15 MR. COLBY: Well, let me first start by saying that you can't get
16 a real good answer to what kinds of things will actually be -- that this will be brought
17 to bear on. But the kinds of things that we can imagine that it would be brought to
18 bear on would be those regulations which -- for instance, which still exist in the R1
19 and R2.

20 COMMISSIONER FRANKLIN: Such as?

21 MR. COLBY: Such -- where there are still spacing --

22 CHAIRPERSON BENNETT: Where there are numerical
23 occupancy limits or spacing requirements?

24 MR. COLBY: Where there is still spacing and still numbers of
25 persons permitted.

26 CHAIRPERSON BENNETT: Right.

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1 MR. COLBY: As a matter of right. Of course, when you go to
2 the Board, that is another thing again for a special exception.

3 COMMISSIONER FRANKLIN: So under the language that is
4 being proposed, would licensing or the zoning administrator --

5 MR. COLBY: It would be their boss.

6 COMMISSIONER FRANKLIN: What?

7 MR. COLBY: It would be the boss of both. I mean, it would be
8 the head of the Department of Consumer and Regulatory Affairs who covers both
9 those territories.

10 COMMISSIONER FRANKLIN: Well, the language is a little bit
11 unclear to me because it just simply is saying that the determination of handicapped
12 facilities shall be made according to the process and criteria set forth in 14 DCMR
13 blank.

14 MR. COLBY: That is if you -- it is in the appendix following --
15 Appendix C.

16 COMMISSIONER FRANKLIN: Well, I thought that a
17 handicapped facility is going to be defined as in sync with the Fair Housing Act or
18 the ADA, whatever.

19 MR. COLBY: Right.

20 COMMISSIONER FRANKLIN: Yes. The Fair Housing -- so a
21 handicapped -- housing for the handicapped is defined under Section 3602(h) of the
22 Fair Housing Act. Now 201.1 says that a determination of handicapped facilities is
23 going to be made according to some other criteria. I just don't understand which is
24 supposed to apply or are they both or is the least restrictive?

25 MR. COLBY: The process -- I mean 14 DCMR is really a
26 process regulation. So the process that is defined there, which comes out of the

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1 agreement, again, with the Justice Department, is a process which they will have to
2 go through to get reasonable accommodation on their request.

3 COMMISSIONER FRANKLIN: Well, you are picking out the
4 word process and I am looking at the word criteria.

5 MR. COLBY: Well, it doesn't -- it includes no criteria.

6 COMMISSIONER FRANKLIN: 14 DCMR includes no criteria?

7 MR. COLBY: No.

8 COMMISSIONER FRANKLIN: Well, then why do we make
9 reference to criteria if they are not there?

10 MR. COLBY: Well --

11 COMMISSIONER FRANKLIN: Maybe the reference should be
12 just to process.

13 MR. COLBY: The wording came from Justice. And I can't -- I
14 mean, they may think those are criteria. I don't -- they are regulations which say
15 who you apply to and how you go about applying and what treatment you should
16 get. But they don't define -- they don't apply criteria for applying and they don't
17 provide criteria for applying reasonable accommodation. In fact, I don't think there
18 are such criteria.

19 COMMISSIONER FRANKLIN: But there is a process set forth?

20 MR. COLBY: Yes.

21 CHAIRPERSON BENNETT: Right.

22 COMMISSIONER FRANKLIN: Okay.

23 CHAIRPERSON BENNETT: You will get to tell us when you
24 come up, okay? You cannot speak --

25 AUDIENCE MEMBER: I am not coming up. I am not speaking
26 tonight. I didn't plan to answer --

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1 CHAIRPERSON BENNETT: But you cannot speak from the
2 audience. We are electronically recording. Okay?

3 COMMISSIONER FRANKLIN: The Commission can invite you -
4 -

5 CHAIRPERSON BENNETT: So, Mr. Franklin, you are
6 wondering -- yes, in due course. You were asking who determines what is a
7 handicapped facility and whether it is the federal -- the housing amendments, which
8 determines what a handicapped person or whether it is that person which is defined
9 in 201.1 as having the ability to determine --

10 COMMISSIONER FRANKLIN: Well, my overarching --

11 CHAIRPERSON BENNETT: -- what a handicapped facility is.

12 COMMISSIONER FRANKLIN: Well, my overarching question is
13 how does all that relate to this notion of making reasonable accommodation?

14 MR. COLBY: They are somewhat -- as I understand it, they are
15 somewhat simple. What is handicapped is fairly clearly defined under the law, at
16 least broadly. And that is treated here by relaxing regulations so that handicapped
17 are treated ostensibly as everybody else and not singled out in the multi-family
18 zones and higher. As to reasonable accommodation, which applies to handicapped
19 living or the ability to get relief, additional relief, applies to the handicapped where an
20 individual applies for and is deemed to need some special circumstances. And it is
21 easier to think about it -- since it is an individual basis, it tends to apply not to a
22 building, which zoning would do, but rather to -- I mean, not to the building in terms
23 of its location and the like, but rather to some need that the door has to be wider or
24 something has to be maybe added to the house that encroaches on the front yard
25 because the handicapped person has to get in a special way or a fire escape.

26 COMMISSIONER FRANKLIN: That I understand.

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1 CHAIRPERSON BENNETT: But I understand that there is
2 another piece to it. I mean, one you would -- the reasonable accommodation refers
3 to making those kinds of modifications in structure, but the other item that you
4 describe in item B in midway 6 -- a) talks about modifications of existing premises; b)
5 talks about making accommodations and rules, policies, practices, services. And
6 that, I would imagine, refers to the kind of numerical occupancy limits or spacing
7 requirements that might be -- might pertain to some CBRFs in a given zone district.

8 MR. COLBY: Right.

9 CHAIRPERSON BENNETT: And so as I understood it then, the
10 Fair Housing Act amendment is saying that when a jurisdiction has to consider an
11 individual case or the establishment of a facility for the handicapped that we ought to
12 be prepared to do one or both of those sets of things. We ought to be prepared to
13 allow -- I guess from code requirements and things -- allow there to be some
14 modification of the premises. And we ought to be prepared to relax some of the
15 spacing requirements and other kinds of requirements that are attached to the
16 establishment of such a facility.

17 COMMISSIONER FRANKLIN: The spacing requirements go
18 with 330.5. As I read your report and as I read the language, if you mean by
19 spacing requirements that it can't be within --

20 MR. COLBY: No. Yes, that is right.

21 COMMISSIONER FRANKLIN: There can't be more than so
22 many within a certain --

23 CHAIRPERSON BENNETT: Right. Right.

24 COMMISSIONER FRANKLIN: That is no
25 longer --

26 CHAIRPERSON BENNETT: That dies.

1 COMMISSIONER FRANKLIN: That dies with 330.5.

2 MR. COLBY: Right.

3 COMMISSIONER FRANKLIN: And I can understand an
4 example of let's say there may be a building restriction line or something of the sort
5 which would prevent the construction of a ramp or whatever kind of special facility
6 would enable somebody who is handicapped to gain access to a building. You
7 know, I can understand that. But I don't -- if that is what is intended, I don't think the
8 language in 201.10 does it or at least it doesn't do it for me because it just simply
9 says the determination of handicapped facilities shall be made according to -- let's
10 drop the word criteria -- according to the process set forth in 14 DCMR blank. And I
11 don't see why that is responsive to a notion of reasonable accommodation, which is
12 a normative direction.

13 MR. COLBY: Yes, right.

14 COMMISSIONER FRANKLIN: And this is a very neutral
15 reference.

16 MR. COLBY: Yes.

17 COMMISSIONER FRANKLIN: And the fact that it has been
18 embedded within some agreement doesn't, at least to my mind, require us to adopt it
19 word for word if it doesn't make sense. And to me, it doesn't make sense yet.

20 CHAIRPERSON BENNETT: All right.

21 MR. COLBY: Yes, I think, Mr. Franklin, what -- and I -- as you
22 know, this is one of the cases that I have picked up after Mr. Gross left town, so to
23 speak. But it is also something where the language was clearly worked out by
24 lawyers, no disrespect. And so it is written in a way where it doesn't speak to the
25 normal circumstances to which it applies. I mean you really have to -- it is being
26 cautious in saying what it is saying. It is being broad because it wants to make sure

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1 that the lawyers can continue to work to define what it means. So it is -- I mean, for
2 zoning purposes, it could be a lot clearer.

3 COMMISSIONER FRANKLIN: Okay. Well, I think --

4 MR. COLBY: I agree with you.

5 COMMISSIONER FRANKLIN: For even a recovered lawyer to
6 understand --

7 MR. COLBY: And I don't know how much flexibility we have, but
8 we have taken it as it came to us.

9 COMMISSIONER FRANKLIN: Well, unless it is illuminated and
10 explained to me, I would be inclined to ask Corporation Counsel to come back to us
11 with a better explanation of what that is supposed to mean.

12 MR. COLBY: Yes.

13 COMMISSIONER FRANKLIN: Thank you. That is all I have.

14 CHAIRPERSON BENNETT: Okay. Mr. Parsons?

15 COMMISSIONER PARSONS: Mr. Colby, I am trying to
16 determine the impact of this, and I haven't grasped it yet. I remember how much
17 effort we spent in our deliberations many years ago and came to the conclusion that
18 no facility should exceed 25, as I recall. And the matter of right was at the 6 to 8
19 level because that was a general family definition. Am I to understand here that --
20 for some reason I don't grasp yet -- that there would be no numerical limit to these
21 facilities? They could be 200 or 300?

22 MR. COLBY: There would be no numerical limit, except under
23 the housing code. I mean if the structure were large enough --

24 COMMISSIONER PARSONS: But I don't grasp that concept at
25 all as to why somebody could violate all of the regulations that we have imposed to
26 limit of size based on literally days of record simply by assembling only handicapped

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1 people inside this facility. That they can exceed all those and violate all those.

2 MR. COLBY: Yes, but in a -- I mean, I don't want to be put in a
3 position of defending something that I can't defend or shouldn't try to, but an
4 apartment building or a rooming house which houses any number of persons
5 unrelated, don't require special services to enable them to live there, live there on
6 their own and come and go -- we are familiar with that. But think of it as -- think of
7 these 250 people or 150 or whatever as living in a 150-room apartment house
8 except with caregivers there with them.

9 COMMISSIONER FRANKLIN: Well, if I can try to answer Mr.
10 Parsons as I understand it, it is not breaking open otherwise applicable limits that
11 apply to non-handicapped.

12 CHAIRPERSON BENNETT: Everybody else, right.

13 COMMISSIONER FRANKLIN: If there is a rule relating to
14 occupancy or density or whatever that is applicable across the board irrespective of
15 who is occupying the housing, those don't go by the board just because it is a facility
16 for the handicapped. What it is saying is -- as I understand it -- if you have a -- you
17 can't be more restrictive on housing for the handicapped than you would be on
18 housing for the non-handicapped in the same zone.

19 COMMISSIONER PARSONS: Well, I guess what I am trying to
20 figure out is why our regulations do that.

21 COMMISSIONER FRANKLIN: Well, I wasn't present, but I have
22 a --

23 COMMISSIONER PARSONS: I don't get it. I really don't. I am
24 not going to belabor this tonight, but I don't understand it at all. Obviously --

25 COMMISSIONER FRANKLIN: I can give you my speculation.

26 COMMISSIONER PARSONS: Apparently our regulations say

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1 something that they shouldn't. But to waive all -- as I understand it, we are waiving
2 all spacing and all of the requirements that we have simply to --

3 COMMISSIONER FRANKLIN: Well, what is the basis for the
4 spacing? What is the rational basis for requiring a spacing of CBRFs?

5 COMMISSIONER PARSONS: Well, we -- well, that is a tough
6 quiz after 20 years.

7 CHAIRPERSON BENNETT: Well, it is not that tough for me. I
8 mean, the idea was that --

9 COMMISSIONER PARSONS: It was based on a block width --
10 an average block width in the city, as I recall, and there should be one per block,
11 and that gave us a 500-foot spacing.

12 COMMISSIONER FRANKLIN: But why should there be one per
13 block occupied by handicapped when you don't say that there ought to be one per
14 block occupied by non-handicapped?

15 COMMISSIONER PARSONS: We do say that. That is my point.

16 COMMISSIONER FRANKLIN: Well, if we do, then it doesn't go
17 out the window. In other words --

18 COMMISSIONER PARSONS: I will have to study this more. I
19 am obviously the only one that doesn't get it. But I am not here.

20 COMMISSIONER FRANKLIN: I think what the Justice
21 Department is saying is that we can't impose on housing for the handicapped
22 greater restrictions than is imposed on housing for the non-handicapped in the same
23 district.

24 COMMISSIONER PARSONS: I understand that, but I don't
25 understand how our regulations do that.

26 COMMISSIONER FRANKLIN: Well, the spacing does to some

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1 degree.

2 COMMISSIONER PARSONS: No. The spacing that is there for
3 non-handicapped is there for handicapped. I don't understand it.

4 COMMISSIONER FRANKLIN: No, it is not there for -- when you
5 are talking about spacing, are you talking about side yards and the like?

6 COMMISSIONER PARSONS: No, spacing between the units.

7 CHAIRPERSON BENNETT: No, no, no. 500 feet or one in a
8 block or one in a square.

9 COMMISSIONER FRANKLIN: But you don't have that
10 requirement for apartments.

11 MR. COLBY: John is talking -- he is making another distinction.
12 He is comparing handicapped CBRFs and non-handicapped CBRFs.

13 COMMISSIONER PARSONS: Right.

14 MR. COLBY: You are comparing, as I was, non-CBRFs and any
15 CBRF or handicapped CBRFs specifically. Now having said that, I don't know how
16 to -- I mean the answer is --

17 CHAIRPERSON BENNETT: We didn't -- as I recall it -- let me
18 see if I can take a stab at this. As I recall it, when we started talking -- when you all --
19 because that was a year or two before I got here -- started talking about CBRFs, you
20 talked about them in terms of impact, and they were organized in terms of what we
21 felt were low, medium, and high impacts. And the more egregious the impact and
22 the larger the numbers, the more the need for the kind of spacing and whatnot that
23 would protect the people in the neighborhoods.

24 COMMISSIONER PARSONS: And BZA review.

25 CHAIRPERSON BENNETT: That is right. In the neighborhoods
26 and BZA review. What may not have been considered at that time was any

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1 distinction between those CBRFs that cater to the handicapped versus non-
2 handicapped, with the thought in mind that handicapped could be in any one of
3 them.

4 COMMISSIONER PARSONS: Sure.

5 CHAIRPERSON BENNETT: You could have handicapped
6 youth. You could have handicapped who occupy healthcare facilities or emergency
7 shelters or any of those things. But handicapped didn't lift up as a special class or a
8 special population around which there were certain concerns. Substance abuse did.
9 Correctional facilities did. But handicapped status did not. And so they got
10 regulated in the same way that non-handicapped did.

11 COMMISSIONER PARSONS: That is exactly my point.

12 CHAIRPERSON BENNETT: And now what the feds are saying
13 is that whether we intended it or not, there is an inadvertent discrimination against
14 folk who are handicapped and that there shouldn't be any more restrictive
15 regulations applying to them or the facilities that they inhabit.

16 COMMISSIONER PARSONS: But these, as I understand it, are
17 less restrictive. That is my point. I mean --

18 CHAIRPERSON BENNETT: You are now making them less
19 restrictive than other CBRFs, but not other facilities for non -- oh, I see what you are
20 saying.

21 COMMISSIONER PARSONS: Yes, the regulations for the same
22 -- I don't get it. But let's proceed with the hearing. I just don't understand it at all.

23 CHAIRPERSON BENNETT: For non-handicapped in other
24 CBRFs is what you are saying?

25 COMMISSIONER PARSONS: It ought to be the same. If they
26 exceed 8, they ought to go to the BZA and let us know what the impacts are going to

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1 be. And not give them a way -- you know, they can put as many people as they
2 want and no spacing requirement. It is giving an incredible advantage to a
3 handicapped. Not equal treatment, an incredible advantage.

4 MR. COLBY: Over other CBRFs?

5 COMMISSIONER PARSONS: Yes.

6 CHAIRPERSON BENNETT: Over CBRF's as opposed to --

7 COMMISSIONER PARSONS: It is just a no rules apply.

8 MR. COLBY: That is because the law applies to in fact
9 advantages -- I won't say advantages, but applies to the handicapped, which is the
10 basic for these exemptions or these changes in the rules. That is not to say that we
11 shouldn't be consistent. But what it -- you know, we live in the past. In the past,
12 these rules were set because of the potential impact of having non-people like us
13 living in a neighborhood or next door, and we wanted as many like us as we could
14 have because that is how we formed our communities. And it was a protection. It
15 was a protection against the unknown in a sense. And we are all a product of that
16 past as well as the present. I mean, I am not doing very good at philosophizing here
17 except to say that it is hard to take issue. I believe that it is hard to take issue with
18 the regulations or with the Fair Housing Act, with the thrust of it. As to whether that
19 should apply to all CBRFs independent of an act to assist them, other CBRFs that
20 aren't for handicapped, I can't answer that.

21 CHAIRPERSON BENNETT: Maybe it would be useful to have --

22 MR. COLBY: I don't know what the distinction is.

23 CHAIRPERSON BENNETT: We mentioned the need to have
24 Corporation Counsel here as someone who had participated in the discussions or
25 the deliberations.

26 MR. COLBY: We can, but I think it is a philosophical question

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1 almost.

2 CHAIRPERSON BENNETT: Well, yes. But as philosophical as
3 it can get, the reason we are here is because the Department of Justice told this
4 jurisdiction that we have got to get our act together so that it comports with what
5 federal law says. So I guess what I am saying is that if our colleagues feel as
6 though what the impact of these rules would be is to give handicapped CBRFs an
7 incredible advantage over CBRFs that are designed to cater to non-handicapped
8 persons, we need to hear someone who was a part of that discussion come here
9 and talk to us about their thinking. Because I don't want to be promulgating or
10 preserving regulations that fly in the face of what the feds say we need to do. At the
11 same time, I don't want to -- it is like a sweater. You pull one thread and it unravels
12 the whole thing. And I think that is what Mr. Parsons is talking about. We need to
13 look at that and ask -- I am sure they asked themselves the same questions. I am
14 sure this same issue came up and got a good deal of debate and discussion. I
15 would like to be privy to that. So maybe we need to do that in another one of our
16 sessions and invite somebody.

17 COMMISSIONER PARSONS: I think so. Just to make it clear.

18 CHAIRPERSON BENNETT: Maybe Corporation Counsel and a
19 DOJ person.

20 COMMISSIONER PARSONS: I am opposed to this. Okay? I
21 am opposed to this as I understand it. I must not get it or we wouldn't be here. If it
22 is as simple as I think it is, there is no reason for us to do this. And others have
23 determined that we need to do something, but I -- that is where I am.

24 MR. COLBY: Well, as I think the materials say, the stick here is,
25 of course, that this district was about to be sued and the suit would go forward.

26 CHAIRPERSON BENNETT: That is right.

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1 MR. COLBY: If we don't act within the 450 days or whatever we
2 have got to push this through.

3 COMMISSIONER FRANKLIN: How many days are left?

4 MR. COLBY: There is plenty of time.

5 CHAIRPERSON BENNETT: Okay. Is that -- does that conclude
6 our discussion with the Office of Planning for the time being?

7 COMMISSIONER PARSONS: Well, and if I am wrong, which I
8 am sure I might be, my first question is what is the impact of this. And I think without
9 an evaluation of that in a quantifiable way, I can't imagine how we would be
10 prepared to deal with it.

11 COMMISSIONER FRANKLIN: I suspect there are going to be
12 people tonight who will let us know about the impact.

13 COMMISSIONER PARSONS: Yes. I mean, I think we know
14 enough about these facilities after this many years to be able to assess what the
15 impact will be of these regulations, that is, how to quantify it, I mean. How many of
16 these facilities are expected or anticipated in the industry? What are the
17 experiences of other jurisdictions if they have done this? Will there be hundreds or
18 tens of these?

19 CHAIRPERSON BENNETT: Is that it?

20 COMMISSIONER PARSONS: Thank you.

21 CHAIRPERSON BENNETT: Okay. You want quantifiable
22 evidence of the impact of these regs.

23 COMMISSIONER PARSONS: Thank you.

24 CHAIRPERSON BENNETT: All right. Let's move on then. Are
25 there any other agencies represented in the audience?

26 MR. COLBY: Oh, I am sorry. I thought that we were --

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1 CHAIRPERSON BENNETT: I just thought maybe someone from
2 DOJ might have sneaked in.

3 MR. COLBY: And I apologize for not leaning on Corporation
4 Counsel to be here to answer some of your questions tonight. Because they
5 certainly could have taken a stab at that.

6 CHAIRPERSON BENNETT: Well, Corporation Counsel or a
7 DOJ representative. That would work for me too. Because they are the ones who
8 are about to take us to court if we don't do something like this. So I would
9 recommend that we get one of each at least. Let's move on to the reports of
10 Advisory Neighborhood Commissions since there are no other agencies. It is 8:03.
11 Is Mrs. Jourdain Brown or John Chagnon here?

12 AUDIENCE MEMBER: Ms. Brown is not here tonight.

13 CHAIRPERSON BENNETT: All right. Good evening.

14 MR. CHAGNON: Good evening, Commissioners. My name is
15 John Chagnon. I am an ANC Commissioner in Ward 4. I appreciate the opportunity
16 to express our communities position on the proposed regulations for reasonable
17 accommodations, and it applies to the R4 changes as well.

18 With the assistance of ANC Commissioner Jourdain Brown and
19 two attorneys from our community, Dave Wilson and Larry Schwartz, I am able to fill
20 in for Ms. Brown and provide you with a composite of our views. DC zoning
21 regulations presently take into account the strain CBRFs can place on residential
22 neighborhoods. Ward 4 has been saturated with institutional uses of neighborhood
23 homes for both the disabled as well as youth detention homes, halfway houses, and
24 shelters. My colleague, ANC Commissioner Brown, circulated a petition in Ward 4
25 and obtained over 700 signatures requesting a moratorium be placed on the location
26 of additional CBRFs in Ward 4. Communities have relied on the zoning regulations

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1 to help assure a reasonable level of dispersion of CBRFs, to limit their density and
2 the impact of institutional uses. The regulations now in place have not solved the
3 disparate dispersement of CBRFs throughout the city and the proposed regulations
4 would make a bad situation worse in Ward 4.

5 In my testimony, I make three points regarding why the proposed
6 regulations require substantial revision. First, the proposed DCRA regulations fail to
7 provide public input when a request for reasonable accommodation is made under
8 the Fair Housing Act. Second, instead of providing that the request be filed with the
9 Board of Zoning Adjustment, which has a system for making such decisions,
10 proposed regulations delegate such authority to the Department of Consumer and
11 Regulatory Affairs, which lacks such a system. Third, the proposed regulations do
12 not provide a mechanism for an appeal from the decision of DCRA. In addition,
13 there is a technical deficiency in requiring the issuance of a detailed decision only
14 when the applicant is denied. The Fair Housing Act requires reasonable
15 accommodation in rules, policies, practices, and services when such
16 accommodations may be necessary to afford a person equal opportunity of the use
17 of a dwelling. The Fair Housing Act does not require, however, that cities abandon
18 procedural requirements in zoning matters of a public hearing by a zoning agency
19 with a system of holding such hearings and rendering decisions on zoning matters
20 and for an appeal of a zoning determination. Holding a hearing in which opposing
21 parties can effectively participate before an agency that is experienced in creating a
22 record and rendering decisions that can be appealed are indispensable
23 requirements for insuring that the zoning decisions are enriched by the debate of the
24 opposing parties. These requirements are the landmarks of the U.S. administrative
25 system. Zoning officials should not be required to make important decisions that
26 affect the public interest based only on the arguments made by the requester of a

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1 reasonable accommodation. All sides of the issue must be heard in order for the
2 administrative process to properly function.

3 The proposed regulations should be redrafted to permit the
4 administrative process to operate within the defined parameters that now govern the
5 operation of BZA. First, as to the public hearing point, the proposed regulations are
6 intended to provide reasonable accommodations as previously said. However, the
7 Fair Housing Act does not require cities to eliminate public hearing. For example, in
8 Oxford House v. Virginia Beach, the Court found that Congress surely did not
9 mandate a blanket waiver of all facially neutral zoning policies and rules regardless
10 of the facts. Rather, the Court noted that the facts are collected and interests are
11 balanced through the process of applying for a conditional use permit. The Court
12 pointed out that the zoning process provides for hearings and that if such hearings
13 were not provided, the Courts would become not an Appellate body, but they would
14 instead become zoning boards of first instance that would inappropriately be
15 required to become involved in the finding of fact.

16 The proposed regulations do not provide any public input. There
17 is no provision for providing notice to the public or notice to ANC Commissioners,
18 further exacerbating the problem of hiding the public from the process. Section
19 111.5 of the proposed regulation provides that the applicant for reasonable
20 accommodation may mark any information that it submits as confidential and only
21 Agency personnel shall have access to the confidential information. As drafted,
22 there is nothing to stop an applicant from marking the entire file as confidential,
23 which would eliminate any realistic opportunity for obtaining public comments. If
24 there is confidential information, it could be made available under a protective order
25 to interested parties. We propose that confidentiality provisions be redrafted to
26 permit the protection of information that is truly confidential while preserving the

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1 ability of interested parties to gain access to the confidential information for the
2 purpose of analyzing the validity of the claims being made by the requestor of the
3 reasonable accommodation.

4 Second, the reasonable accommodation request should be ruled
5 on by the BZA. It is the type of issue that the BZA traditionally rules upon. A
6 reasonable accommodation request is in the nature of a zoning variance or a special
7 exception requirement in which BZA has expertise. BZA is set up to provide written
8 notice to potential parties, hold public hearings, and draft decisions which include
9 findings of fact and conclusions of law. DCRA lacks the procedural and substantive
10 background to perform these functions. It is simply not designed to handle these
11 decision-making processes. Consequently, we strongly recommend that reasonable
12 accommodation requests be considered by BZA.

13 The Courts have upheld having agencies similar to the BZA
14 making reasonable accommodation determinations, the 7th Circuit Court in U.S. vs.
15 the Village of Palantin in Illinois. In this case, the Court found that requiring the
16 request for reasonable accommodation to seek a special use approval does not
17 constitute a violation of the Fair Housing Act's reasonable accommodation provision.

18 Third, the Appellate process, if any, is at best unclear. We
19 recommend that the proposed regulations be amended to provide that appeals from
20 the BZA decisions on a request for reasonable accommodation be handled in the
21 same manner as our other appeals of BZA appeals.

22 Finally, I note the technical matter in Section 111.11. The
23 proposed regulations provide in the second sentence that if the director denies a
24 request in whole or in part, the director shall explain in detail the basis for the
25 decision. The proposed rule as drafted does not provide that the director shall
26 explain in detail the basis of the decision if the request is granted in the event that

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1 there is an appeal, so that the Appellate Tribunal has a basis for reviewing the
2 Agency's decision. That should be provided and reworked in the regulations that
3 provide for the BZA resolving reasonable accommodation requests.

4 We ask that the Zoning Commission revise the proposed
5 regulations to provide a public hearing, requiring applications to be filed with the
6 BZA, explicitly identify the Appellate procedure, and eliminate or substantially limit
7 the use of confidentiality, and require that all decisions to be made after due process
8 is given to all parties with written decisions incorporating findings of fact and
9 conclusions of all. Making these changes will permit the processing of a request for
10 reasonable accommodation to be applied in a consistent manner and less subject to
11 political manipulation.

12 CHAIRPERSON BENNETT: Thank you, Mr. Chagnon.
13 Questions of this witness?

14 COMMISSIONER FRANKLIN: Just an observation -- oh, go
15 ahead, Mr. Parsons.

16 COMMISSIONER PARSONS: I guess I am having trouble
17 finding the issue of confidentiality in the regulations that we are proposing.

18 COMMISSIONER FRANKLIN: It is DCMR -- this is the --

19 CHAIRPERSON BENNETT: That is in the 14 DCMR.

20 COMMISSIONER FRANKLIN: The Consumer Regulatory
21 Affairs -- Appendix C of the report. The last document in the OP report. It is not our
22 regs.

23 COMMISSIONER PARSONS: Well, that is my point.

24 CHAIRPERSON BENNETT: It is the 111.5.

25 COMMISSIONER PARSONS: This has nothing to do with this
26 proceeding.

1 MR. COLBY: But it is effectively incorporated into ours by --

2 CHAIRPERSON BENNETT: By reference.

3 MR. COLBY: By reference. And would have, if it weren't so
4 lengthy, been just -- we would have tried to bring it into ours if it made any sense to
5 do that, and it doesn't.

6 COMMISSIONER PARSONS: But what I mean is we have no
7 authority to change these. So is the witness suggesting that we revise these
8 regulatory -- we can't. We have no authority to do that. And say, well, in this case
9 confidentiality won't apply?

10 COMMISSIONER FRANKLIN: Well, I interpret what the witness
11 is saying is that we ought to have our own way of handling reasonable
12 accommodation which would follow the criteria that has been suggested, namely to
13 have some public input.

14 COMMISSIONER PARSONS: I would support that. But I am
15 trying to get to the issue of confidentiality, which is --

16 COMMISSIONER FRANKLIN: Well, the question is whether we
17 ought to cross-reference these under our regulations, as I see it.

18 COMMISSIONER PARSONS: All right. Thank you.

19 COMMISSIONER FRANKLIN: And he is raising a legitimate
20 question as to whether we ought to do that.

21 COMMISSIONER PARSONS: All right.

22 COMMISSIONER FRANKLIN: Am I interpreting you correctly?

23 MR. CHAGNON: Yes. Absolutely.

24 COMMISSIONER PARSONS: Thank you for answering the
25 question.

26 MR. CHAGNON: That was made a lot easier by Mr. Franklin.

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1 CHAIRPERSON BENNETT: Well, let me just say that if I follow
2 Mr. Chagnon's suggestions all the way to their logical conclusion, we get back to
3 exactly what we had, and that is a set of regulations that required, not as a matter of
4 right, but with some public review, which is our BZA process, certain CBRFs above
5 a certain number located in certain places and having certain populations. I mean
6 that is exactly why the BZA process was there. That is exactly why the special
7 exceptions process was established in the first place.

8 COMMISSIONER FRANKLIN: Well, I think Mr. Chagnon's
9 testimony is very interesting because it cites some Federal Courts of Appeal that are
10 addressing specifically the question as to whether something like our BZA procedure
11 violates the reasonable accommodation provisions of the Federal Fair Housing Act.
12 And if these are properly cited, and I have no reason to believe they aren't, there are
13 at least some cases -- none in this Circuit are cited -- that would suggest that our
14 BZA procedure is not a violation of the Fair Housing Act. And I think it would be very
15 useful to hear from Corp Counsel and the Department of Justice with appropriate
16 citations as to why our existing procedure violates the reasonable accommodation
17 provisions of the Fair Housing Act.

18 COMMISSIONER PARSONS: Well put.

19 CHAIRPERSON BENNETT: And that is what our OP
20 summarized on page 6. It says, "However, while some courts have upheld the
21 validity of the special exception process for this purpose, many others have not.
22 And DOJ prefers the matter of right interpretive process." So what you would like to
23 have them do is come here and tell us why.

24 COMMISSIONER FRANKLIN: Yes. And there may be some
25 controlling precedent within this Circuit.

26 CHAIRPERSON BENNETT: Okay.

1 COMMISSIONER FRANKLIN: It would have been nice if they
2 had cited that in their agreement.

3 CHAIRPERSON BENNETT: All right. Thank you very much.
4 Ms. Jackson? Good evening.

5 MS. JACKSON: Good evening. First of all, let me say I am
6 sorry I did not bring any copies with me. I just did this at work this evening. But
7 copies will be faxed to you tomorrow morning. I will drop this past the ANC office so
8 the secretary can get it typed up.

9 MS. DOBBINS: We can do it. We can make the copies.

10 MS. JACKSON: Oh, okay.

11 MS. DOBBINS: They can make them here.

12 MS. JACKSON: If you can understand my scribbling. I would
13 prefer to have it typed.

14 MS. DOBBINS: Oh, okay.

15 MS. JACKSON: It will look a little more professional. I did it in a
16 rush at work this evening.

17 MS. DOBBINS: Okay.

18 MS. JACKSON: We had got on the list early as soon as we got
19 the notice, and I just -- the time just went past me real fast.

20 CHAIRPERSON BENNETT: How are you doing this evening. It
21 is good to see you.

22 MS. JACKSON: Let me say good evening again.

23 MS. DOBBINS: Ms. Jackson, is your microphone on? There is
24 a green light. If it is not on, your microphone is not on.

25 MS. JACKSON: No.

26 MS. DOBBINS: Hold that button down until it stays on. There it

1 is.

2 MS. JACKSON: Okay. Once again, let me say good evening.
3 My name is Mary D. Jackson. I am an ANC Commissioner in Ward 7. I am
4 Chairperson of ANC 7E. My single member district is 7E04. I am here tonight as an
5 ANC -- as an Advisory Neighborhood Commissioner and a born-Washingtonian. I
6 am here tonight to protest this zoning amendment.

7 I think the Office of Planning, the Justice Department, the
8 Corporation Counsel, and DCRA have some nerve petitioning this Board to ask that
9 our neighborhoods once again be dumping grounds for handicapped individuals
10 whose disabilities have not been completely spelled out to the community. A
11 disability could mean a number of medical or physical conditions. Most of the city
12 can no longer continue to accept these houses with open arms. I know that Ward 7
13 is already overrun with drug dealers, private homeless shelters, a large population of
14 public housing projects, and too many Section 8 housing certificates.

15 The Planning Office played with our zones two years ago without
16 any input from our community. One side of the street is zoned R2 while the other
17 side is zoned R5A. There never were any hearings held. And when we questioned
18 this Board, we were told nothing had been changed. Well, we have maps of two
19 years prior to that, and that said something different.

20 The Zoning Board has the same mentality as the ABC Board. I
21 am sorry to say that to you all, but that is the way we feel. In this city, the wards with
22 the most poor and black population, I guess you are saying let's keep them
23 overcrowded and drunk. They won't be able to tell the difference anyway. The
24 changing of these zones to accommodate all of the federal dollars that is coming
25 into this city since the city is an enterprise community and some parts of it will
26 become an empowerment zone could best be served by carefully evaluating where

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1 the zone changes will be and what area of the city it will have the greatest impact
2 on.

3 As an ANC, I will circulate petitions in my Ward from this day
4 forward to protest any zoning changes you have planned in Ward 7. What I would
5 like to see you do is rezone where the drug dens and close up some of these crack
6 houses and apartment buildings that have been eyesores for years in our
7 community, and I think that would make much better sense than this amendment
8 that we have before us tonight.

9 So I didn't mean to come and step on anybody's toes or insult
10 anybody, but this is just how we feel because we have just been overburdened with
11 a lot of things that zoning and ABC regulations have done to us in my particular part
12 of Ward 7.

13 CHAIRPERSON BENNETT: Thank you, Ms. Jackson.
14 Questions of Ms. Jackson? Questions? All right. Thank you very much.

15 MS. JACKSON: Okay. Thank you. And I will get this back, and
16 I will be sending a copy of it to Corporation Counsel, DCRA, and to the Justice
17 Department.

18 MS. DOBBINS: Ms. Jackson?

19 MS. JACKSON: Yes.

20 MS. DOBBINS: Madam Chair, may I ask one question about the
21 report?

22 CHAIRPERSON BENNETT: Certainly.

23 MS. DOBBINS: Ms. Jackson, did the ANC take an official vote
24 and have a quorum and all of that present to come up with this?

25 MS. JACKSON: No. No.

26 MS. DOBBINS: Okay.

1 MS. JACKSON: This is -- what we did was we sent a copy of the
2 notice and a short letter to all of the commissioners in Ward 7.
3 MS. DOBBINS: Okay. So what you are --
4 MS. JACKSON: So this room should be full with them. This
5 view is my view for my single member district.
6 MS. DOBBINS: Okay. That is what I wanted to know.
7 MS. JACKSON: It is not reflecting my entire --
8 MS. DOBBINS: Because I was going to ask when you put it in
9 writing to make sure we have that information.
10 MS. JACKSON: We will vote on it Tuesday when we have our
11 regular meeting.
12 MS. DOBBINS: And you will send us -- you will send the
13 Commission a report of the ANC?
14 MS. JACKSON: Yes.
15 MS. DOBBINS: Okay.
16 MS. JACKSON: Thank you.
17 CHAIRPERSON BENNETT: Okay. Lyle Schauer?
18 MR. WOLF: Before Mr. Schauer, we both represent the same group, the
19 Capitol Hill Restoration Society.
20 CHAIRPERSON BENNETT: You need to tell us who you are for
21 the record.
22 MR. WOLF: I am Mr. Wolf, and I put my card in. If you want me
23 to stand back and come seriatim, I will do that.
24 CHAIRPERSON BENNETT: No. You are welcome to stay as a
25 panel if you wish. Good evening.
26 MR. SCHAUER: Good evening.

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1 MR. WOLF: Lyle, do you want to go first?

2 MR SCHAUER: My name is Lyle Schauer. I reside at 1107
3 Independence Avenue, S.E. I am the Zoning Chair of the Capitol Hill Restoration
4 Society. Mr. Wolf, who has joined me tonight, is the City Planning Chair of the
5 Society.

6 CHAIRPERSON BENNETT: Please proceed.

7 MR. SCHAUER: I am going to try to hit just a few of the high
8 spots in this rather than to read the thing into the record. The Capitol Restoration
9 Society is a civic association. We have about 800 members. Our interest area is on
10 Capitol Hill, bounded on the north by H Street, N.E., on the east and south by the
11 Anacostia River, and on the west by North and South Capitol Streets. We are very
12 concerned with this proposal because almost all of our residential districts are zoned
13 R4. It is probably the biggest single conglomeration of R4 zoning in the District of
14 Columbia. It starts at the Southeast/Southwest Freeway in Southeast Washington
15 and goes north to about the Soldiers Home, that great wide band running up into
16 Northeast Washington. All of our -- or almost all of our residential districts,
17 therefore, are R4. And we feel that this will impact us very heavily because it will
18 encourage proprietors to come into the R4 zone to establish CBRFs for
19 handicapped people if all of these requirements are swept away as are proposed in
20 the 330.5.

21 We believe that the R4 districts will be particularly affected
22 because they are characterized by modest-size row houses. By and large we are
23 not talking about big buildings here. They are modest-size row houses which are
24 very well suited for CBRFs for handicapped people. And I -- we do have CBRFs for
25 handicapped in our neighborhoods. I have one around the corner from me. It is for
26 severely retarded persons, six residents. It causes absolutely no problem. It is a

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1 well-run facility. It is one facility in the block. If we were to add a number of other
2 facilities, it might and would, I think, change the character of our neighborhood,
3 which would have a bad effect on the residents of the CBRFs also. Because the
4 whole idea is to get them into a home-like surrounding. The one around the corner
5 from me is very much like a home-like surrounding. The building looks exactly like
6 the single-family dwellings next to it. The people blend into the neighborhood very
7 nicely. I am sure they find it a lot better than being in a great large institution. So
8 this is not a "not in our backyard" kind of thing. We do have facilities like this and
9 they work well as long as there aren't too many of them. If there are too many, they
10 are going to change the character of the neighborhood.

11 Now the proposed changes in 330.5 apply, of course, as Mr.
12 Colby pointed out, to the more intensive use districts as well, the R5's and so on up.
13 All of the more intensive use districts where residences are allowed. But we think
14 because of the kind of housing stock we have, our R4 districts are more likely to
15 receive CBRFs than the more intensive districts. And that is for a couple of reasons.
16 One, the more intensive use districts, R5 and up, tend to have bigger buildings,
17 which are not very amenable to CBRFs. Our problem isn't that there are going to be
18 big establishments. It is going to be a lot of little ones. And there is an effort to put
19 handicapped persons into that kind of small facility. So I don't think the operators
20 are going to go into the R5 zone or the commercial zones where the buildings tend
21 to be larger and where you have less of a home-like atmosphere. They are going to
22 try to go into the R4 zone because that is going to be the easiest place for them to
23 go.

24 We think that some of the principles that were expressed in the
25 1980/1981 comprehensive case really do apply very well today. For one, the
26 CBRFs should be dispersed as equally as possible around the city so that no area

1 will have a disproportionate share of those facilities. And second, that smaller
2 family-sized facilities should be encouraged so as to lessen the neighborhood
3 impacts and provide a home-like environment for residents. I think those are sound
4 principles.

5 Now I want to assume just for the sake of argument that the
6 stipulated agreement accurately -- let me take it off my paper here. Let us assume
7 for the sake of argument that regulation of CBRFs under the Fair Housing Act is
8 correctly stated by the stipulated agreement. In other words, the argument that I
9 wanted to make is, okay, we accept the stipulated agreement as being properly
10 interpretive of the Fair Housing Act. The regulations that will be affected by that are
11 in the R4 and more intensive zones, and they include such restrictions as spacing
12 and special exception, and those that apply to the CBRFs for the handicapped but
13 do not apply to housing for non-disabled persons. So my proposal is a very simple
14 one -- very simple. And it will, I think -- if you start with my assumption that the
15 stipulated agreement properly states the Fair Housing Act -- if you start with that
16 assumption, I would change one number in the 330.5, and that is the number 4. I
17 would change it to 1. That is, where it now reads R4, it would say R1. In other
18 words, the requirements would be swept away for handicapped CBRFs in all the
19 residential zones, not just the R4 and more intensive use. All the residential zones.
20 That would open R1, R2, and R3 to the kinds of small CBRFs that are to be
21 encouraged under the regulations.

22 I think the reason we got into these complications is because the
23 stipulated agreement -- well, it reminds me of the story told of the camel. The camel
24 was the product of the committee that set out to invent the horse. And I think that is
25 where many of the complications come in. The committee set out and they made
26 certain assumptions. And one of those assumptions was that this must apply only to

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1 single-family -- it must not apply to single family district residences because the Fair
2 Housing Act does not reach single-family structures as I understand it. Therefore,
3 we have to apply it only to zones that permit multi-family residences, because clearly
4 it is going to apply there.

5 Now this Commission does not have to follow slavishly that
6 provision. They can simply say let's apply it to all the residential districts. And if we
7 do that, then I don't think we need 220.5 and this strange little procedure that is
8 introduced into the zoning regulations. Now the procedure is not a bad procedure,
9 but it doesn't really apply to zoning or it wouldn't have to apply to zoning if these
10 regulations applied to all the residential zones. Then you don't need it anymore.
11 You need it for other purposes. I am not saying that DCRA should not enact it. But
12 it is not needed for zoning purposes. It is needed for building code adjustments and
13 a number of other such things -- housing code adjustments. It is not needed any
14 longer for the zoning codes.

15 There is my proposal, Madam Chairperson and members of the
16 Commission.

17 CHAIRPERSON BENNETT: Thank you, Mr. Schauer. Let's
18 hear from Mr. Wolf and then we will open up for questions. Is that all right? Good
19 evening, Mr. Wolf.

20 MR. WOLF: Good evening. My name is Richard Wolf, and as
21 Mr. Schauer has indicated, I am the Chair of the City Planning Committee and have
22 been for some time of the Capitol Hill Restoration Society. I live at 146 11th Street,
23 S.E. And just for the record, I want to indicate that I have been doing this kind of
24 thing for about 30 years. I am a lawyer. I was on the board of a hospital in the
25 District, Capitol Hill Hospital. I was on the Audit Committee of Med-Atlantic
26 Healthcare Corporation. I am involved as a board member of the CDC in rebuilding

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1 a public housing project. I have been there and done that. I think I know what the
2 issues are on a very real level. I was also one of the original staff members at the
3 U.S. Commission on Civil Rights. So I think I understand -- I think I understood at
4 one time at least what I thought was the civil rights issue. I am not sure I understand
5 it today.

6 But in any event, I want to pose a couple of issues to you. I
7 haven't formally written them down, but I will after this is over and submit it for the
8 record. First of all, there have been a number of references to the settlement. The
9 vagueness and unknowability of some of what is contained in that settlement -- and
10 it is too bad that the Corporation Counsel is not here to explain some of it. But I
11 have got to tell you that I don't understand why the District rolled over for the Justice
12 Department on this issue. Because I don't think what we have is necessarily
13 unreasonable.

14 Secondly, I don't understand why when the accommodation was
15 made to the Justice Department to go for matter of right they started with R4. I don't
16 think the Corporation Counsel or the Planning Office understands that most of the
17 R4 in the District of Columbia really is quite modest housing. In fact, it is the
18 housing which contains most of the families that are now leaving the District of
19 Columbia and has been so aptly characterized as one of the problems that the
20 District of Columbia has. Where people of modest means who are raising their
21 families are leaving the District for reasons that obtain to the conditions in their
22 neighborhood.

23 Then I want to address this issue -- and before I leave that, I
24 want to say that leaving out all the other residential zones from this agreement is
25 really a beggar thy neighbor approach. And I think it smacks of the grossest kind of
26 unfairness when it comes down to who is going to get the problem, if you will.

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1 Now let me address the issue of is this a problem or is this not a
2 problem. Are these small home-like places for the handicapped, which embraces a
3 very broad range of people with very varying kinds of conditions, what are these?
4 Well, I can tell you from having been on the board of a hospital that these are
5 institutions. They are not homes as we understand it. They very often have to meet
6 certain building code requirements because they are institutions. They very often
7 have to accommodate staff 24 hours a day in their parking requirements. For
8 whatever reason, the Congress has been sold some notion that many institutions in
9 neighborhoods are not institutions, but they are. And we have them. We have at
10 least 2300 beds of such institutions stretching from North and South Capitol Street
11 to the river, in what is popularly known as Capitol Hill or the west side of Ward 6.
12 And we have maps showing and identifying where those facilities are. The Planning
13 Office should have provided you all with all of that stuff -- Because that is where we
14 got our information -- showing the impact of what you are considering today.

15 And I also want you to understand something you probably do understand
16 already, but I will say it for the record. These institutions are run as businesses.
17 There are many -- there are hundreds of contractors in the District of Columbia, and
18 they are not all non-profits or idiomonisonary organizations who are running these
19 institutions. They are businesses, and they are a very powerful element in the
20 business community of this city.

21 I just want to also tell you, just as an informational matter, that
22 because of what the Justice Department has done in these cases, and because of
23 the split among the courts in the way in which the Fair Housing Act is treated, that
24 the League of Cities and a number of municipalities have supported a change in the
25 Fair Housing Law, a change which is now being marked up in the House Banking
26 Committee, to deal with some of the issues that are before you today. But I think

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1 you can do a better job than what has been presented to you by the Corporation
2 Counsel and the Justice Department. And I also think that ultimately when you have
3 to make a decision which may be confined by the settlement that has been reached
4 that you remember that the distribution of these homes throughout the District of
5 Columbia in all residential zones is a necessary component of acting fairly to all the
6 citizens of the District. That is my testimony.

7 CHAIRPERSON BENNETT: Thank you, Mr. Wolf. questions of
8 Mr. Wolf or Mr. Schauer?

9 COMMISSIONER FRANKLIN: Mr. Wolf, if many or most of
10 these facilities are businesses, why aren't they here telling us they think this is
11 great?

12 MR. WOLF: They have got what they want. Why do they have to
13 tell you? You are supposed to do what the stipulation tells you to do, Mr. Franklin.

14 COMMISSIONER FRANKLIN: Okay.

15 MR. WOLF: None of the advocacy organizations are here. They
16 believe they have won their battle.

17 COMMISSIONER FRANKLIN: Well, I am also struck, though, by
18 the absence of large numbers of citizens.

19 MR. WOLF: I am struck by that too. And quite frankly I think it is
20 because, if you want my opinion -- and I will give it to you -- because of the political
21 changes that have taken part in this city. People basically are shell-shocked and
22 they don't believe that participation in what is -- this is part of the political process --
23 is going to be meaningful. And I will tell you, with respect to this issue, with the
24 stipulation that is before you, it is hard for me to understand why my participation
25 might be meaningful, since it appears that you may be compelled to act, whether
26 you like it or not, to enact these matters. Or if you fail to act, that somehow they will

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1 go with the stipulation to a local court or Federal District Court and say they have
2 stipulated to these and here is what we are going to do. And, Your Honor, we want
3 to enjoin the Zoning Commission either to do it or that you do it for them. Put you all
4 at receivership like the rest of the District agencies.

5 COMMISSIONER FRANKLIN: Do you believe that a Court can
6 direct us to take a legislative act?

7 MR. WOLF: That is a good question. And I believe there was a
8 case involving the Counsel of the District of Columbia being directed to do
9 something and I think they took it to court. And because they were acting as a
10 legislature, the Court
11 -- another court overruled the Court that had issued the injunction or mandamus to
12 do whatever they were supposed to do. I don't know whether you are going to fall
13 within that category. You are acting in a quasi-legislative mode at this point.

14 COMMISSIONER FRANKLIN: It is rulemaking.

15 MR. WOLF: Rulemaking.

16 CHAIRPERSON BENNETT: Okay. Is that all? Thank you,
17 gentlemen.

18 MR. WOLF: Thank you.

19 CHAIRPERSON BENNETT: Now will the gentleman who was
20 so eager to speak from the audience, I know you are not on this list, but if you wish
21 to come forward, we would like to here you.

22 MR. HALL: My name is Richard Hall.

23 CHAIRPERSON BENNETT: All right now, Mr. Hall, we have got
24 to fill you out some slips if you have not already done so.

25 MR. HALL: I have not and I am happy to do it. Should I do it
26 now or should I speak and then fill them out.

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1 CHAIRPERSON BENNETT: No, you can speak now and fill out
2 the slips later.

3 MR. HALL: My name is Richard Hall. I am speaking tonight or I
4 came here tonight on behalf of the Campaign for New Community. I am a lawyer. I
5 am the zoning coordinator for the Campaign for New Community. It may be that
6 people always think they are going to catch everything, but we flat did not catch this
7 notice, so I did not sign up. I am prepared to file written comments and have done
8 so on several matters.

9 The Campaign for New Community filed a petition with the
10 Zoning Commission in August of 1997, after two years of legal work on behalf of a
11 dozen prominent zoning lawyers in the city, churches, church organizations, non-
12 profits, petitioning the Zoning Commission to consider the very issues that are now
13 before the Zoning Commission on the proposed Department of Justice Agreement.

14 Our proposal to you was a comprehensive one which, for
15 instance, would have allowed in effect or largely -- ours was in a sense more
16 detailed and specific, but it would have allowed changes in zones R1, R2, and R3. It
17 was comprehensive. It may have had problems here or there, but it attempted to
18 deal with it as a whole. It was referred to the Office of Planning, who declined to
19 issue a report, although we had asked them in several meetings -- we had met with
20 them face-to-face. And we had asked this Commission to take our petition up at the
21 same time that you took up this matter which is pending before you now. And in a
22 vote in November, you declined to do so.

23 But we would urge you to consider our petition. It is a substantial
24 process supported by extensive legal briefs, extensive planning analysis, detailed
25 text. And in addition, we have provided to the Office of Planning an entire printout of
26 where every provision of the zoning code would be affected by -- I assume you still

1 have that.

2 So we believe there is pending before the Commission a very
3 thorough -- debatable certainly -- but a very thorough proposal that would, we think,
4 in a balanced way deal with all of these issues. We believe that the Department of
5 Justice and the District of Columbia agreement do not go far enough. And I don't
6 necessarily mean far enough in terms of a particular outcome for a particular
7 advocate of a particular position. It does leave a fair amount to later interpretation
8 and it leaves a very large amount to the implementation and the interpretation of the
9 reasonable accommodation provision.

10 It attempts to resolve one particular issue, which I understand
11 historically the way it is structured, dealing with R4 because it sort of arose out of
12 concern about the Luther Place fight. But instead of dealing with it in an across the
13 board manner, however they deal with it, it was shorter hand to deal with it as R4
14 and leave for the reasonable accommodation provision picking up whatever pieces
15 needed to be picked up in zones R1, R2, and R3 and elsewhere. And we do believe
16 they need to be picked up. This is, we believe, a problem that spreads across all
17 zones.

18 So while you may not want to reconsider your decision in
19 November not to take up our petition simultaneously, we do think it has merit.
20 Because it lays out what many of the considerations are across all zones. It has got
21 maybe 120 pages of legal briefs split between the Fair Housing Act and the
22 Religious Freedoms Act issues. So we dealt with those together, which would be
23 churches who are trying to provide facilities for the needy as well. But in any case,
24 there is a good 60 or 70 pages on the Fair Housing Act. I think the cases are much
25 more broadly presented. And I would have filed this as a written comment and will
26 plan to file it, but that is a somewhat backhanded way, in a sense, to answer a

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1 particular and good question about what do the cases say and what are we dealing
2 with here.

3 Now I also don't have a full -- I didn't come prepared to sort of
4 speak extemporaneously endlessly about a very detailed topic. I will say that the
5 reasonable accommodation provision does have a criteria in it. The Campaign for
6 New Community filed comments, in fact, in the rulemaking -- lengthy comments in
7 the rulemaking before the Department of Consumer and Regulatory Affairs where
8 we discussed them and made some suggestions for changing and for improving
9 them, we think. But nevertheless, there are comments. They are rather soft type
10 criteria, but they are criteria nevertheless. It isn't just procedure. That answers one
11 question you had and a fair question. If it is just a procedure, what are we doing
12 here.

13 I will also say that I think, Mr. Parsons, that the agreement with
14 the Department of Justice was taken out of concern for the position -- I think Mr.
15 Franklin has correctly stated as did Chair Bennett -- that they are looking to solve
16 the disparity between housing for the non-handicapped with housing for the
17 protected handicapped. Now in doing that, they clearly left the unprotected
18 handicapped over in a different corner. You are absolutely correct. But they
19 focused on what Congress has created, which is the Fair Housing Act, which
20 protects a certain class of people. That is the law and the other classes, if they are
21 protected, they are protected by abstract constitutional principles that don't have the
22 direct immediate application. So the result is as you say, but the concern and the
23 intention was as you say, Mr. Franklin.

24 We also in the Campaign for New Community have made
25 extensive effort trying to build up the ability of community groups who are interested
26 and churches to learn to reach out to communities. To maintain and build bridges to

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1 communities. And we have many stories of disputes that have arisen because of
2 bad communication about a church or some other group that wants to build
3 something that is good. The community gets very concerned. We can understand
4 that. And a much better way is to reach out to -- and we have had trainings on that.
5 We have provided materials on that. We have had video tapes on that. It is equally
6 our mission to try to create bridges between those groups, private and public, who
7 want to -- and non-profit -- who want to help the needy and the communities that
8 have every right to be concerned about what goes on in their neighborhood.

9 I remember -- I live in Ward 3. I live up near Chevy Chase
10 Circle. I remember when a D.C. housing for mildly retarded blind men was brought
11 into the neighborhood. There were a lot of concerns. My wife was an ANC
12 commissioner then. She was not concerned. We were not concerned. They are
13 completely integrated into the neighborhood. We have all been through that cycle in
14 some way. If it is a well-run facility, it actually ends up being a plus in many ways
15 because you recognize that no man is an island unto himself. He is in your
16 community. And you are a better person for it and the community is a better place
17 for it. But these fears do exist. They are real fears and they need to be addressed.

18 Now I don't have -- I have been somewhat involved with the
19 Department of Justice agreement and the District of Columbia. I may say that
20 James Randall is the Corporation Counsel attorney who negotiated that. And that
21 may be the person you need to speak to if you want to speak to him. Kenneth
22 Zimmerman is the Department of Justice lawyer who negotiated it. But I certainly
23 can't represent to you what went on in that and those are the people you need to
24 speak to. I can offer, despite my failure to catch this in the notice, and it is really my
25 failure -- I can offer you a panel of providers, religious and non-religious lawyers, to
26 answer all your questions if you wish, and I will do that on any occasion you want. I

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1 can offer you and would be happy to offer you the opportunity to visit one or more
2 facilities of this nature. You bring who you want. I am not trying to exclude other
3 people of a different view, but I make that offer on behalf of the Campaign for New
4 Community. We can do that and will do that and offer that to you.

5 CHAIRPERSON BENNETT: All right. Thank you, Mr. Hall.
6 Colleagues, questions of Mr. Hall?

7 COMMISSIONER FRANKLIN: Well, Mr. Hall, I am very grateful
8 that you have come forward. I have to confess that I don't recall the basis on which
9 we acted on that petition last fall. I frankly don't recall it.

10 CHAIRPERSON BENNETT: As I recall it, we saw this -- at least
11 I saw this as relatively narrowly defined and thought that there was going to be a
12 time, and we have been saying this for a couple of years now, where we would look
13 at the larger set of issues. But that if that were that narrowly defined, we could deal
14 with this and then look at the other issues later in a case scenario that I lovingly
15 described as a bear.

16 COMMISSIONER FRANKLIN: Well also, and perhaps Mr. Hall
17 can clarify this, my vague understanding of your petition at the time, and I think you
18 renew it tonight, is that it was premised on the Religious Freedom Restoration Act?

19 MR. HALL: I would say about 75 or 80 percent of it was based
20 on the Fair Housing Act, and it dealt with the very issues that are before you.

21 COMMISSIONER FRANKLIN: Okay. I see.

22 MR. HALL: There was a 20 or 25 percent -- it is hard to say
23 percentage in lines or number of issues or however you want to call it -- the
24 relatively small minority was on the Religious Freedoms issue. It was a combined
25 petition. That may have been part of the confusion.

26 COMMISSIONER FRANKLIN: Yes, that may be.

1 MR. HALL: But if it had been picked up and looked at, you
2 would easily see how it was structured and that it was a comprehensive presentation
3 across the board. The great majority was on the Fair Housing Act.

4 COMMISSIONER FRANKLIN: Well is there -- were there
5 recommendations in that petition which one could say were reasonably within the
6 scope of what we have advertised tonight for a change in zoning?

7 MR. HALL: Yes, I think they are. I mean I think they are, in fact,
8 all within the scope. They are, in some instances, more particular and more
9 detailed. But that is the kind of working out of what the -- I think it is a fairly intended
10 consequence of the reasonable accommodation procedure that provisions of the
11 zoning code in effect in R1, R2, and R3 would be subject to in the right case to
12 waiver so that there would be the result that Mr. Schauer mentioned. That, in fact,
13 for instance, the family-size issue of 4 or 6 unrelated people would be subject to in
14 the right showing waiver, as it was in the Oxford House litigation which the District of
15 Columbia entered into. So in a sense if that is a potential involvement of the
16 reasonable accommodation provision, which we believe it is, then ours is all within
17 that. Because we attempt to make it specific as opposed to it is all over here in a
18 very general clause and we will let people thrash it out, which could be very messy.

19 COMMISSIONER FRANKLIN: Well, Madam Chair, unless the
20 staff indicates that it would be improper, I don't see any reason why the petition to
21 which Mr. Hall refers ought not to be added to the record of this case,
22 notwithstanding the fact that some of it might not be relevant, as an aid in so far as it
23 is relevant to what we are considering.

24 CHAIRPERSON BENNETT: Okay. Or the other way we could
25 do that is --

26 MR. HALL: The religious freedoms portion is actually backed by

1 -- the religious freedoms brief and actual text amendments are in a separate
2 document. They came in simultaneously. The text amendments and legal brief that
3 deals with the Fair Housing Act issues is a separate document. It was all in one
4 petition. So it is easy enough -- the zoning or the planning document that we
5 submitted is predominantly housing. That may be one where there is a few
6 references to religious institutions which are -- it is maybe merged some, although it
7 is predominantly housing.

8 CHAIRPERSON BENNETT: Let me ask this. I remember the
9 document, and it is relatively thick, at least the one -- it had a blue cover on it?

10 MR. HALL: The blue one is the Religious Freedoms Restoration
11 Act. The green one is the Fair Housing Act.

12 CHAIRPERSON BENNETT: Okay. I guess what I am -- in lieu
13 of having the entire petition, is there a way to lift what is most appropriate at least for
14 our consideration here?

15 MR. HALL: Well --

16 MS. DOBBINS: Excuse me. I was about to say the Campaign
17 for New Community has withdrawn that petition and have filed the religious portion,
18 a new petition.

19 CHAIRPERSON BENNETT: I see.

20 MS. DOBBINS: So the cleanest way that I think for it to come
21 into the record in any way in this situation would be for the Campaign to submit the
22 portions that they think are related to this as testimony to you.

23 CHAIRPERSON BENNETT: I think that is --

24 MR. HALL: Let me explain why we withdrew it. We withdrew it,
25 Ms. Dobbins, at your suggestion because we felt that this was the same area. We
26 were disappointed that the more comprehensive proposal hadn't been taken up, but

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1 that we had had -- in a sense, there was a proposal covering that area and that
2 there was no proposal in what you have before you now covering the religious area.
3 So we would make that discreet. But it has -- just among the five witnesses here, it
4 is clear that the work we did in that withdrawn petition is all -- on the housing side is
5 all relevant because it raises these questions about what happens in R1 and what
6 happens in R2 and what is really at stake. So I will submit that and I will do it if you
7 wish -- I will do it tomorrow or Monday by messenger, so that if there is any -- I
8 mean, as part of comments, as long as I can maybe have an opportunity to
9 comment later on in addition.

10 COMMISSIONER FRANKLIN: Well, I don't know how long the
11 record is going to be kept open, Madam Chair, but I don't see any reason why Mr.
12 Hall, when he submits his petition, could not accompany it with whatever additional
13 comments he wants to make.

14 CHAIRPERSON BENNETT: I don't have a problem with that. It
15 looks like -- especially since we are going to be asking for additional input from DOJ
16 and Corporation Counsel, that certainly makes sense to me.

17 MR. HALL: And we would be -- we are a group of lawyers in
18 substantial part, some of the prominent lawyers of the city have participated in this.
19 And I believe they would have something to offer if you cared to ask them if you
20 wanted to hear lawyers speak. So if you cared to have a discussion where they
21 were there to answer your questions if you posed them as well as the Department of
22 Justice and/or the Corporation Counsel. I know the Corporation Counsel, at least
23 James Randall, wouldn't mind. We have been communicating for months now as
24 this process went forward. But I make that offer. Partners in the prominent law
25 firms in the city have devoted several years to this effort and I think may be a
26 resource that you want to plumb.

1 COMMISSIONER FRANKLIN: We often do hear from lawyers.

2 MR. HALL: And they aren't getting a fee in this case, which
3 makes it a little quirky, right?

COMMISSIONER FRANKLIN: Well, I
4 would welcome the opportunity to have some light shed on what to me is a very
5 puzzling proposal. While you are before us, Mr. Hall, do you have any comments
6 about this provision before us which is supposedly addressing the reasonable
7 accommodation provision?

8 MR. HALL: Yes, Your Honor -- I am so used to saying Your
9 Honor.

10 COMMISSIONER FRANKLIN: I won't reject that.

11 MR. HALL: You won't reject that. I do. Let me say first that the
12 Campaign for New Community also filed a petition with the DCRA about a year and
13 a half ago to start a rulemaking on their prior reasonable accommodation provision.
14 We believed that it was seriously inadequate and we -- I wrote an 8-page letter
15 discussing that old provision and what we thought were the hallmarks of a proper
16 provision, including case law for it and citations. I think it is a rather -- it is kind of an
17 odd twist of affairs, but several courts have held that public notification of reasonable
18 accommodations for the handicapped violates the Fair Housing Act. And perhaps
19 the nearest one is the District Court for the District of Maryland and the Maryland
20 Attorney General has ruled that Maryland statutory requirements for public notice
21 and possibly hearing, but there it was just public notice, of the pendency of a
22 reasonable accommodation provision for the handicapped was treating them to kind
23 of painful exposure of their conditions, treatment that was different from the people
24 who ordinarily were buying houses. That it was, as you said, a kind of a
25 continuation of a discriminatory practice. So the Attorney General in Maryland has
26 ruled that it violates federal law, accepting the authority of the District Court for the

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1 District of Maryland.

2 COMMISSIONER FRANKLIN: Nothing in the District of
3 Columbia Circuit is controlling?

4 MR. HALL: I don't believe there is. I would like to go back and
5 be sure. The last time I looked, which was about a year ago, there wasn't. I am not
6 100 percent certain there isn't now. There is some discussion of the statute in the
7 decision against the District of Columbia involving the Tabatha House, which you
8 may have heard about. But I don't think it would be considered controlling precedent
9 because the issue wasn't directly presented. It is favorable to the notion of what the
10 District Court did in Maryland. So whether you would view that as controlling or not,
11 it depends to some extent on how you view the law.

12 CHAIRPERSON BENNETT: Okay. Thank you, Mr. Hall. We
13 appreciate it. Mrs. Dobbins?

14 MS. DOBBINS: Yes.

15 CHAIRPERSON BENNETT: When were we supposed to get
16 together next time?

17 MS. DOBBINS: I think it is the 19th.

18 CHAIRPERSON BENNETT: March 19th?

19 MS. DOBBINS: March 19th.

20 CHAIRPERSON BENNETT: What is the procedure for asking
21 Mr. Randall and Mr. Zimmerman to come back or to come over, not to come back.

22 MS. DOBBINS: I will send a letter.

23 CHAIRPERSON BENNETT: Okay.

24 COMMISSIONER FRANKLIN: March 19. Is that a Monday?

25 MS. DOBBINS: I think it is a Thursday.

26 COMMISSIONER FRANKLIN: A Thursday. Okay.

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1 CHAIRPERSON BENNETT: That is one of the things that we said we
2 wanted to do so that they could come here. The other is that we wanted --
3 colleagues, do you -- I think it was Mr. Wolf who suggested that we get a hold of
4 some maps showing the locations of CBRFS, especially in R4 zone districts. That
5 those existed in the Office of Planning. Is it your wish to have these entered into the
6 record?

7 COMMISSIONER FRANKLIN: Sure. Why not?

8 CHAIRPERSON BENNETT: All right. And then the last, of
9 course, is that portion of the petition previously submitted by the Campaign for New
10 Community that best addresses the issues that we have before us. Those are the
11 three things that I have that we said we wanted. And we will reconvene then on
12 March 19.

13 MS. DOBBINS: I think the ANC is going to submit a report.

14 CHAIRPERSON BENNETT: Right. But the record is open to
15 receive that.

16 COMMISSIONER FRANKLIN: I have a conflict on March 19.
17 So I will be glad to read the record. I regret very much that I won't be here.

18 COMMISSIONER PARSONS: Well, why don't we go to the next
19 date.

20 CHAIRPERSON BENNETT: Well, but we may -- let me suggest
21 this. Is Mrs. Kress going to be able to join us on that day?

22 MS. DOBBINS: She may. She hasn't indicated that she won't
23 be able to.

24 CHAIRPERSON BENNETT: And the reason why
25 -- I mean, despite what I said earlier --

26 MS. DOBBINS: Yes, I know.

1 CHAIRPERSON BENNETT: This is my concern. We don't tell
2 Counsel how to schedule their hearings. MS. DOBBINS: Right.
3 CHAIRPERSON BENNETT: Do you know what I am saying?
4 MS. DOBBINS: Right.
5 CHAIRPERSON BENNETT: So if we have a reason to schedule
6 or to proceed with a future hearing, then that makes sense. And such a reason has
7 arisen out of these proceedings, so it makes sense to do that.
8 MS. DOBBINS: Right.
9 CHAIRPERSON BENNETT: I would try to see if we can't
10 schedule the 19th with Mrs. Kress. Because I suspect that the next meeting may be
11 better attended, number one, and may overflow into yet a third meeting. And at
12 least we have saved those dates. We have those dates established already.
13 MS. DOBBINS: Okay.
14 COMMISSIONER FRANKLIN: The next date is what?
15 COMMISSIONER PARSONS: The 23rd. The following Monday.
16 MS. DOBBINS: After the 19th.
17 CHAIRPERSON BENNETT: That following Monday.
18 COMMISSIONER FRANKLIN: I may not be able to do that too.
19 So I have a problem. I will know soon whether I can do that.
20 MS. DOBBINS: So as of now, you are scheduling for the 19th as
21 indicated in the public hearing notice?
22 COMMISSIONER FRANKLIN: Right now, I cannot come on the
23 19th.
24 MS. DOBBINS: Right.
25 COMMISSIONER FRANKLIN: That is definite. That I know.
26 MS. DOBBINS: Okay.

1 CHAIRPERSON BENNETT: Why don't you come forward. You
2 can't speak from the audience.

3 MS. DOBBINS: Make sure your microphone is on.

4 MS. JACKSON: It is on. This is Commissioner Jackson
5 speaking again. I just wanted to make sure the record states that we are not anti-
6 handicapped in Ward 7. We have homes already there that blend in perfectly with
7 our community. As a matter of fact, they have added some value to some of the
8 houses there. These houses are operated and run by folks that came from Forest
9 Haven some years ago. My grandchildren have even put together reading groups to
10 go read to these grown-ups on certain days. The only thing I want the record to
11 show, because I have listened to some of the testimony from some of the legal side
12 of these issues, is that you have to be a lot more lenient in neighborhoods that are
13 very highly dense already with a lot of rental properties and less homeowners as to
14 where these facilities are put. And I have to agree with Mr. Wolf that a lot of these
15 places are for-profit organizations that run these facilities. Because one such facility
16 in my neighborhood -- I don't want to call the name -- they went bankrupt because of
17 mismanagement and someone else took over. So we have to look at the issue of
18 who is going to run these places, how often are they going to change hands, who is
19 going to handle the legal side of it, and how well the community is going to be
20 protected. That is what we are here for and that is what we stand for.

21 CHAIRPERSON BENNETT: Thank you. We will reconvene our
22 next session at 7:00 on March 19, 1998.

23 (Whereupon, at 9:08 p.m., the public hearing was concluded.)
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